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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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16
17 **Cecil Eugene Shaw,**

18 Plaintiff,

19 v.

20 **Mariani Inn and Restaurant, Inc.,**
21 a California Corporation; and Does
22 1-10,

23 Defendants.

24
25 **Case No.**

26 **Complaint For Damages And**
27 **Injunctive Relief For Violations**
28 **Of: American's With Disabilities**
Act; Unruh Civil Rights Act

17 Plaintiff Cecil Eugene Shaw complains of Mariani Inn and Restaurant,
18 Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as
19 follows:
20

21
22 **PARTIES:**

- 23 1. Plaintiff is a California resident with physical disabilities. He suffers
24 from debilitating back and hip pain. He uses a wheelchair for mobility.
25 2. Defendant Mariani Inn and Restaurant, Inc. owned Mariani's Inn &
26 Restaurant located at or about 2500 El Camino Real, Santa Clara, California,
27 in November 2019.
28 3. Defendant Mariani Inn and Restaurant, Inc. owns Mariani's Inn &
Restaurant ("Restaurant") located at or about 2500 El Camino Real, Santa

1 Clara, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein,
7 including Does 1 through 10, inclusive, is responsible in some capacity for the
8 events herein alleged, or is a necessary party for obtaining appropriate relief.
9 Plaintiff will seek leave to amend when the true names, capacities,
10 connections, and responsibilities of the Defendants and Does 1 through 10,
11 inclusive, are ascertained.

12

13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to the Restaurant in November 2019 with the intention to
27 avail himself of its goods and to assess the business for compliance with the
28 disability access laws.

1 9. The Restaurant is a facility open to the public, a place of public
2 accommodation, and a business establishment.

3 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
4 to provide wheelchair accessible dining surfaces in conformance with the ADA
5 Standards as it relates to wheelchair users like the plaintiff.

6 11. On information and belief the defendants currently fail to provide
7 wheelchair accessible dining surfaces.

8 12. These barriers relate to and impact the plaintiff's disability. Plaintiff
9 personally encountered these barriers.

10 13. As a wheelchair user, the plaintiff benefits from and is entitled to use
11 wheelchair accessible facilities. By failing to provide accessible facilities, the
12 defendants denied the plaintiff full and equal access.

13 14. The failure to provide accessible facilities created difficulty and
14 discomfort for the Plaintiff.

15 15. The defendants have failed to maintain in working and useable
16 conditions those features required to provide ready access to persons with
17 disabilities.

18 16. The barriers identified above are easily removed without much
19 difficulty or expense. They are the types of barriers identified by the
20 Department of Justice as presumably readily achievable to remove and, in fact,
21 these barriers are readily achievable to remove. Moreover, there are numerous
22 alternative accommodations that could be made to provide a greater level of
23 access if complete removal were not achievable.

24 17. Plaintiff will return to the Restaurant to avail himself of its goods and to
25 determine compliance with the disability access laws once it is represented to
26 him that the Restaurant and its facilities are accessible. Plaintiff is currently
27 deterred from doing so because of his knowledge of the existing barriers and
28 his uncertainty about the existence of yet other barriers on the site. If the

1 barriers are not removed, the plaintiff will face unlawful and discriminatory
 2 barriers again.

3 18. Given the obvious and blatant nature of the barriers and violations
 4 alleged herein, the plaintiff alleges, on information and belief, that there are
 5 other violations and barriers on the site that relate to his disability. Plaintiff will
 6 amend the complaint, to provide proper notice regarding the scope of this
 7 lawsuit, once he conducts a site inspection. However, please be on notice that
 8 the plaintiff seeks to have all barriers related to his disability remedied. See
 9 Doran v. 7-11, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 10 encounters one barrier at a site, he can sue to have all barriers that relate to his
 11 disability removed regardless of whether he personally encountered them).

12

**13 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 14 WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all
 15 Defendants.) (42 U.S.C. section 12101, et seq.)**

16 19. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 17 again herein, the allegations contained in all prior paragraphs of this
 18 complaint.

19 20. Under the ADA, it is an act of discrimination to fail to ensure that the
 20 privileges, advantages, accommodations, facilities, goods and services of any
 21 place of public accommodation is offered on a full and equal basis by anyone
 22 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 23 § 12182(a). Discrimination is defined, *inter alia*, as follows:

24 a. A failure to make reasonable modifications in policies, practices,
 25 or procedures, when such modifications are necessary to afford
 26 goods, services, facilities, privileges, advantages, or
 27 accommodations to individuals with disabilities, unless the
 28 accommodation would work a fundamental alteration of those

1 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
2 b. A failure to remove architectural barriers where such removal is
3 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
4 defined by reference to the ADA Standards.
5 c. A failure to make alterations in such a manner that, to the
6 maximum extent feasible, the altered portions of the facility are
7 readily accessible to and usable by individuals with disabilities,
8 including individuals who use wheelchairs or to ensure that, to the
9 maximum extent feasible, the path of travel to the altered area and
10 the bathrooms, telephones, and drinking fountains serving the
11 altered area, are readily accessible to and usable by individuals
12 with disabilities. 42 U.S.C. § 12183(a)(2).

13 21. When a business provides facilities such as dining surfaces, it must
14 provide accessible dining surfaces.

15 22. Here, accessible dining surfaces have not been provided.

16 23. The Safe Harbor provisions of the 2010 Standards are not applicable
17 here because the conditions challenged in this lawsuit do not comply with the
18 1991 Standards.

19 24. A public accommodation must maintain in operable working condition
20 those features of its facilities and equipment that are required to be readily
21 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

22 25. Here, the failure to ensure that the accessible facilities were available
23 and ready to be used by the plaintiff is a violation of the law.

24

25 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
26 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
27 Code § 51-53.)**

28 26. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
3 that persons with disabilities are entitled to full and equal accommodations,
4 advantages, facilities, privileges, or services in all business establishment of
5 every kind whatsoever within the jurisdiction of the State of California. Cal.
6 Civ. Code §51(b).

7 27. The Unruh Act provides that a violation of the ADA is a violation of the
8 Unruh Act. Cal. Civ. Code, § 51(f).

9 28. Defendants’ acts and omissions, as herein alleged, have violated the
10 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
11 rights to full and equal use of the accommodations, advantages, facilities,
12 privileges, or services offered.

13 29. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
14 discomfort or embarrassment for the plaintiff, the defendants are also each
15 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
16 (c).)

17

18 **PRAYER:**

19 Wherefore, Plaintiff prays that this Court award damages and provide
20 relief as follows:

21 1. For injunctive relief, compelling Defendants to comply with the
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
23 plaintiff is not invoking section 55 of the California Civil Code and is not
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. Damages under the Unruh Civil Rights Act, which provides for actual
26 damages and a statutory minimum of \$4,000 for each offense.

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1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3 Dated: February 19, 2020 CENTER FOR DISABILITY ACCESS
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5 By:



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7 Amanda Seabock, Esq.
8 Attorney for plaintiff

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